IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.867 OF 2005

1.The Board of Trustees of the Port of Mumbai
2.Shri S.M.Patil
(Estate Manager (I/C),
Mumbai Port Trust ...Applicants

vs.

1.Mumbai Municipal Corporation
2.State of Maharashtra ...Respondents

Mr.R.R.Bhosale i/b M/s.Mulla & Mulla & C.B.C.for the Applicants
Mr.D.P.Adsule,A.P.P. for State
Ms Aliya N. Pathan for Respondent No.1.

CORAM: A.S.OKA,J.
DATE : DECEMBER 14,2006.

ORAL JUDGMENT:

1. On 9th February 2005 this Court issued notice for final disposal of the Appeal at admission stage. The prayer in this Application under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the said Code) is for quashing of the complaint filed by the first Respondent-the Mumbai Municipal Corporation against the Applicants for offence punishable under section 475-A of the Mumbai Municipal Corporation Act, 1888 (hereinafter referred to as the said Act). The first Applicant is the Board of Trustees of the Port of Mumbai and the second Applicant is an Officer of the Mumbai Port Trust. In the complaint it is alleged that a notice was issued to the Applicants on 30th September 2004 under section 354 of the said Act. Though the said notice was duly received by the Applicants, no action was taken by the Applicants and therefore, the complaint was filed

by the first Respondent in the court of learned Metropolitan Magistrate, Mumbai.

2. The learned Counsel for the Applicants has invited my attention to the copies of correspondence made by the Applicants with the first Respondent prior to issuance of notice dated 30th September 2004. He pointed out that repeatedly the Applicants were requesting the first Respondent to demolish the building in question and the Applicants had also offered to pay charges for demolition of the building in question. He submitted that now the building has already been demolished by the first Respondent and the cost incurred for demolition have been borne by the Applicants. He, therefore, submitted that this is a fit case for exercising power under section 482 of the said Code.

3. The learned Counsel for the first Respondent opposed the application by pointing out that the offence was complete as there was non compliance of the notice issued under section 354 of the said Act. The learned Counsel for the first Respondent also submitted that there are large dues payable to the first Respondent-Corporation by way of property taxes in respect of the said building. It is submitted that no case is made out for quashing.

4. I have considered the submissions made by the learned Counsel for the parties. The notice dated 30th September 2004

issued under section 354 of the said Act records that the building in question of which the first Applicant was the owner was in a ruinous condition and was likely to collapse. By the said notice, the second Applicant was called upon to secure the dangerous part of the building or to restore/repair/ pull down existing structure without causing nuisance or loss to human life. It appears that the said building was attached by the first Respondent on account of non payment of taxes by the occupants of the building. There was attachment levied by the Income Tax Department on account of non payment of income tax by one of the occupants of the building.

5. In reply to the said notice, the second Applicant wrote a letter to the Assistant Commissioner of the first Respondent on 3rd November 2004 inviting attention of the first Respondent to letters dated 26th May 2004 and 20th October 2004, sent by the first applicant requesting the first Respondent to demolish the building. It was also pointed out that a request was made by the Applicants to the first Respondent to forward an estimate of the amount required for demolition of the building. By the said letter, it was pointed out that some slums have cropped up on the footpath touching the boundaries of the building in question. The first Respondent was called upon to take necessary action.

6. My attention has been invited to the letter dated 8th

October 2001 submitted by the first Applicant to the Assistant Commissioner of the Income Tax Department recording that the vacant possession of the premises in building in question has been secured by the Applicants on 10th January 2001. A request was made that necessary legal proceedings be initiated against the lessees for recovery of the amount on account of tax and the attachment of the property may be vacated. Various letters were record written by the Applicants to the Income Tax Department requesting the Department to vacate the order of attachment.

7. By a letter dated 3rd May 2003 sent by the Applicants to the Municipal Commissioner of the first Respondent, the attention of the first Respondent was invited to the fact that the building was in dilapidated condition and mishap may be caused at any time. It was pointed out that the other properties of the occupants of the building viz. M/s.Chaman Estates Pvt.Ltd. and the Department of Telecommunication may be attached by the first Respondent for the recovery of the property taxes due and payable by them and it was necessary to deal with dilapidated structure immediately to avoid any mishap. By a letter dated 26th May 2004 sent by the second Applicant, the Municipal Commissioner of the first Respondent was informed about the steps taken by the Income Tax Department to vacate the attachment. By the said letter a request was made by the Applicants to first Respondent to initiate action under section 354 of the said Act for

demolition of the structure. By the said letter, the first Respondent was requested to forward an estimate of the amount required for demolition of the structure to enable the Applicants to obtain necessary administrative sanction from the competent authority. On 5th June 2004, again a request was made by the applicants to the first Respondent to demolish the building before onset of the monsoon. The request was repeated by another letter. The last letter dated 2nd September 2004 was sent by the Applicants to the first Respondent requesting the first Respondent not to link the payments of disputed arrears of taxes with demolition of the building and to take immediate steps without any further loss of time.

8. It is not in dispute that now the building has been demolished at the cost of the Applicants. Even before the notice on the basis of which the prosecution was lodged was served to the Applicants, several letters were written by the Applicants to the first Respondent calling upon the first Respondent to demolish the building as it had become very dangerous. Thus, it is obvious that the Applicants always supported the action under section 354 of the said Act for which notice was issued by the first Respondent. If these are the facts which are borne out from the record, it is obvious that the public authority like Mumbai Port Trust cannot be prosecuted at the instance of the first Respondent-Corporation. In view of demolition of the

building, it is obvious that the continuation of prosecution will be an empty formality. This is a fit case for exercising power under section 482 of the said Code for quashing the proceeding of the complaint.

9. Hence, Application is disposed of by passing the following order :

i) Rule is made absolute in terms of prayer clause (b).

ii) It is made clear that notwithstanding this order, it will be open for the first Respondent to take appropriate steps for recovery of the dues on account of municipal taxes in respect of the building in question.

iii) It is obvious that the recovery of the amount will be made in accordance with law.

JUDGE